

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0343

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 53** - 02/17/2005

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for adequate access to health care provider
2 networks.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person, directly or indirectly, offering a plan or program providing a discount on the
7 fees of any provider of health care goods or services, that is not offered directly by a health
8 carrier as provided by this chapter, shall register in a format as prescribed by the director and
9 shall file reports and conduct business under the same standards as required of utilization review
10 organizations in accordance with provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health
11 carrier may offer or provide coverage through a person not registered but required to be
12 registered pursuant to this Act. Any plan or program that is registered pursuant to § 58-17C-20
13 is not required to maintain a separate registration pursuant to this Act. A plan or program of
14 discounted goods or services that is offered by a health carrier in conjunction with a health
15 benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or a medicare supplement policy as



1 defined in § 58-17A-1, is not required to be registered pursuant to this Act. A plan or program
2 offered by a health care provider as defined in § 34-12C-1 is not required to register pursuant
3 to this Act if the health care provider does not charge for the plan or program.

4 Section 2. That chapter 58-17C be amended by adding thereto a NEW SECTION as follows:

5 Any person subject to registration pursuant to section 1 of this Act shall prominently and
6 boldly disclose that the product is not insurance. Any advertisements or solicitations made by
7 such a person are subject to the provisions of §§ 58-33A-2 to 58-33A-4, inclusive, and §§ 58-
8 33A-7 to 58-33A-8, inclusive, and §§ 58-33A-10 to 58-33A-12, inclusive. Any administrative
9 rule promulgated pursuant to § 58-33A-7 does not apply to those registered pursuant to this Act
10 unless specifically referenced in the rule. If any such person fails to comply with these
11 provisions or the provisions of this Act, the director may take action in the same manner as
12 provided for by § 58-17C-67 and may revoke the registration. Any such action by the director
13 is subject to notice and hearing as provided by chapter 1-26 and § 58-4-7. A person acting as
14 an agent as defined in chapter 58-30 who sells, solicits, or negotiates a plan or program
15 containing insurance benefits shall meet the licensing and appointment requirements of that
16 chapter if such person is otherwise required to be licensed by chapter 58-30.

17 Section 3. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No person subject to registration pursuant to section 1 of this Act may receive personal
20 information, money, or other consideration for enrollment in a plan or program until the
21 consumer has signed a contract or agreement with the person and no later than at the time the
22 contract is signed, provides, at a minimum, the following information, disclosed in a clear and
23 conspicuous manner:

24 (1) The name, true address, telephone number, and website address of the registered

1 person who is responsible for customer service;

2 (2) A detailed description of the plan or program, including the goods and services
3 covered and all exemptions and discounts that apply to each category thereof;

4 (3) All costs associated with the plan or program, including any sign-up fee and any
5 recurring costs;

6 (4) An internet website that is updated regularly or a paper copy where the consumer can
7 access the names and addresses of all current participating providers in the
8 consumer's area;

9 (5) A statement of the consumer's right to return the plan or program within thirty days
10 of its delivery to the person or agent through whom it was purchased and to have all
11 costs of the plan or program, excluding a nominal process fee refunded if, after
12 examination of the plan or program, the purchaser is not satisfied with it for any
13 reason;

14 (6) A statement of the consumer's right to terminate the plan or program at any time by
15 providing written notice or other notice, the form to be used for the termination
16 notice, and the address where the notice is to be sent if different than the address
17 provided in subdivision (1); and

18 (7) Notice that the consumer is not obligated to make any further payments under the
19 plan or program, nor is the consumer entitled to any benefits under the plan or
20 program for any period of time after the last month for which payment has been
21 made.

22 The requirement that the contract or agreement be signed prior to any money or
23 consideration being obtained does not apply to a transaction in which payment by the consumer
24 is made by credit card or by means of a telephonic transaction so long as the disclosures

required by this section are provided to the consumer by way of postal mail, facsimile, or electronic mail within ten business days of the consumer's enrollment.

Section 4. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

Any plan or program offered by a person subject to registration pursuant to section 1 of this Act shall provide thirty days from the date of the signed consumer contract or agreement, thirty days from the receipt of the disclosures required by section 3 of this Act if the consumer purchased the plan or program over the telephone, or sixty days if payment is by automatic or electronic withdrawal from a bank account, in which the consumer may return the plan or program to the person or agent through whom it was purchased and have all costs of the plan or program, excluding a nominal processing fee as prescribed by the director by rules promulgated pursuant to chapter 1-26, refunded in full.

Section 5. That § 58-18-20 be amended to read as follows:

58-18-20. Any insurer authorized to write health insurance in this state ~~shall have the power to~~ may issue blanket health insurance. No such blanket policy or certificate may be issued or delivered, or coverage solicited, in this state unless a copy of the form thereof ~~shall have~~ has been filed in accordance with § 58-11-12. Every such blanket policy or certificate shall contain provisions, which in the opinion of the director, are at least as favorable to the policyholder and the individual insured as those set forth in §§ 58-18-21 to 58-18-27, inclusive.

Section 6. Any person subject to registration pursuant to section 1 of this Act shall maintain a surety bond in the amount of twenty thousand dollars issued by a surety company authorized to do business in this state, or establish and maintain a surety account in the amount of twenty thousand dollars at a federally insured bank, savings and loan association, or federal savings bank located in this state. Each surety bond and surety account is subject to the following:

- 1 (1) A copy of the bond or a statement identifying the depository, trustee, and account
2 number of the surety account, and thereafter proof of annual renewal of the bond or
3 maintenance of the surety account, shall be filed with the director of the Division of
4 Insurance;
- 5 (2) A surety account shall be maintained until two years after the date that the person
6 subject to registration pursuant to section 1 of this Act ceases operations in the state.
7 Funds from any surety account may not be released to the person subject to
8 registration pursuant to section 1 of this Act without the specific consent of the
9 attorney general;
- 10 (3) No surety on the bond of a person subject to registration pursuant to section 1 of this
11 Act may cancel such bond without giving written notice thereof to the secretary of
12 state. Whenever the secretary of state receives notice of a surety's intention to cancel
13 the bond of a person subject to registration pursuant to section 1 of this Act, the
14 secretary of state shall notify the affected person that, unless such person files another
15 twenty thousand dollar surety bond with the secretary of state or establishes a twenty
16 thousand dollar surety account on or before the cancellation date of such surety bond,
17 then such person subject to registration pursuant to section 1 of this Act is no longer
18 authorized to do business in this state;
- 19 (4) The bond or surety account shall be in favor of any person and the director of the
20 Division of Insurance for the benefit of any person who is damaged by any violation
21 of this Act, including any violation by the supplier or by any other person which
22 markets, promotes, advertises, or otherwise distributes a discount card on behalf of
23 the supplier. The bond shall cover any violation occurring during the time period
24 during which the bond is in effect; and

1 (5) Any person claiming against the bond or surety account for a violation of this Act
2 may maintain an action at law against the person subject to registration pursuant to
3 section 1 of this Act and against the surety or trustee of the surety account. The
4 aggregate liability of the surety or trustee of the surety account to all persons
5 damaged by violations of this Act may not exceed the amount of the surety bond or
6 account.